

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

One Mart Corporation

Former Licensee of Station KEVT  
Cortaro, AZ  
Facility ID #13969)  
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)File No. EB-06-SD-210  
NAL/Acct. No. 200732940004  
FRN: 0007290406

**FORFEITURE ORDER**

**Adopted: September 5, 2007****Released: September 7, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand, four hundred dollars (\$6,400) to One Mart Corporation (“One Mart”), former licensee of AM Broadcast Radio station KEVT<sup>1</sup> in Cortaro, Arizona, for apparent willful and repeated violation of Section 11.35 of the Commission’s Rules (“Rules”).<sup>2</sup> On December 28, 2006, the Enforcement Bureau’s San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$8,000 to One Mart for failing to ensure the operational readiness of KEVT’s Emergency Alert System (“EAS”) equipment.<sup>3</sup> In this *Order* we consider One Mart’s request that we reduce the forfeiture amount because of its good faith efforts to comply with the Rules, its history of compliance with the Rules, and its financial ability to pay the forfeiture.

**II. BACKGROUND**

2. On August 17, 2006, an agent from the Enforcement Bureau’s San Diego Office conducted an inspection at the main studio of KEVT located at 2919 E. Broadway, Suite 203, Tucson, Arizona, accompanied by the KEVT chief engineer. Although EAS equipment was installed, the agent found that it was not operating properly at the time of inspection. The San Diego agent found that the EAS equipment was capable of transmitting a required weekly test (“RWT”). However, a review of the EAS logs and printouts generated by the EAS Encoder/Decoder indicated that from November 2005 through August 2006, no required monthly tests (“RMTs”) were received or retransmitted from the first and second local primary stations (“LP-1” and “LP-2”) and that no RWTs had been received from the LP-2 since June of 2005. The EAS logs also indicated that numerous RWTs were not transmitted in

<sup>1</sup> See Assignment of License from One Mart Corporation to Sloan Broadcasting, LLC, File No. BAL-20061010ACT, granted November 27, 2006 and consummated January 5, 2007. Since the assignment of the license to Sloan Broadcasting, LLC, the call sign of the station has been changed to KCEE. We also note that on March 14, 2007, the Commission approved the assignment of license of KQTL, Sahuarita, Arizona, Facility ID No. 19119, from Multicultural Radio Broadcasting Licensee, LLC, to One Mart, File No. BAL-20070129ALJ. The transaction was consummated on April 27, 2007. On May 2, 2007, One Mart changed the call sign of that station to KEVT.

<sup>2</sup> 47 C.F.R. § 11.35.

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732940004 (Enf. Bur., Western Region, San Diego Office, released December 28, 2006).

2006. Only three RWTs were sent during the 15 week period from April 30 – August 12, 2006. No entries were made by the KEVT staff in the EAS log to identify the causes of these failures or what steps were taken to remedy them. On the date of inspection, the San Diego agent requested that the LP-1 and LP-2 both transmit RWTs. Neither RWT could be heard through the KEVT EAS equipment and there was no indication that the KEVT EAS equipment received either RWT. The KEVT EAS equipment did not produce any EAS printout to indicate the RWTs from the LP stations had been received. The chief engineer acknowledged to the San Diego agent that the KEVT EAS equipment may have been having technical problems.

3. On August 29, 2006, the San Diego agent spoke with the KEVT chief engineer and the chief engineer advised that One Mart would be replacing the KEVT EAS equipment. The KEVT chief engineer indicated that he was in the process of obtaining cost estimates from various EAS vendors.

4. On December 28, 2006, the Enforcement Bureau's San Diego Office issued the *NAL* in the amount of \$8,000 to One Mart for violating Section 11.35 of the Rules. One Mart filed a response ("*Response*") to the *NAL* on February 27, 2007, and supplemented that response on June 24, 2007. In its *Response*, One Mart does not dispute the EAS violations found by the San Diego agent. One Mart asks for mitigation of the forfeiture amount based on the destruction of two of the four KEVT antenna structures in 2003 by high winds, and the station's efforts to rebuild while operating under special temporary authority at a greatly reduced power, which greatly reduced its revenue. One Mart also asks that we take into consideration its good faith efforts to replace the EAS equipment, as well as its history of compliance with the Commission's Rules.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").<sup>6</sup> In examining One Mart's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

6. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station's log why any required tests were not received and when defective equipment is removed and restored to service.<sup>8</sup>

7. Section 11.61(a)(1) and (2) of the Rules requires broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.<sup>9</sup> The requirement that stations monitor, receive and retransmit the required EAS tests ensures

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> 47 C.F.R. § 11.35(a) and (b).

<sup>9</sup> The required monthly and weekly tests are required to conform to the procedures in the EAS Operational Handbook.

the operational integrity of the EAS system in the event of an actual disaster. Appropriate entries must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840, indicating reasons why any tests were not received or transmitted.<sup>10</sup>

8. One Mart does not dispute the facts as described in the *NAL*, but does ask for mitigation based on the decreased revenue of the station. One Mart states that two of the four KEVT towers were destroyed by “tornado force winds” on July 15, 2003, and the station was forced to operate at substantially reduced power.<sup>11</sup> This caused a major loss of revenue and listenership to the station. To support this claim, One Mart supplies its last three years of tax records. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.<sup>12</sup> The data produced by One Mart, however, does not support cancellation or reduction of the forfeiture, as the forfeiture amount does not exceed two percent of One Mart’s average gross revenues for the three years covered by the financial documents. Therefore, we are unable to reduce the forfeiture based on One Mart’s inability to pay.

9. One Mart also states that it had planned to address the EAS issues at the station once the station was back at full power.<sup>13</sup> It states that it had planned to have its chief engineer attend the NAB Radio Conference in September 2006 to look for replacement EAS equipment. Reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.<sup>14</sup> While One Mart has acknowledged that new EAS equipment was needed for KEVT, and that it had planned to obtain such equipment, it has produced no evidence that it initiated the purchase of new EAS equipment or the repair of the old EAS equipment repairs prior to the August 17, 2006, inspection by the San Diego agent, who notified One Mart of the EAS equipment issues at KEVT. Therefore, we cannot conclude that One Mart’s efforts to comply occurred prior to a Commission inspection and, consequently, we decline to reduce the forfeiture amount on that basis.<sup>15</sup>

10. Finally, One Mart asks that the forfeiture amount be reduced based on its overall history of compliance with the Commission’s Rules.<sup>16</sup> We have reviewed our records and we concur.

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*See also, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055 (2002).

<sup>10</sup> 47 C.F.R. §§ 73.1820 and 73.1840.

<sup>11</sup> *See* File Numbers BSTA-20030813AHE, granted August 23, 2003; BSTA-20040315AFN, granted April 30, 2004; BSTA-20041101AIA, granted February 23, 2005; BSTA-20050614ADW, granted November 22, 2005; BSTA-20060301AEA, granted November 17, 2006.

<sup>12</sup> *See PLB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues).

<sup>13</sup> One Mart states that by August 24, 2006, the towers were rebuilt and tuned and a license application was filed with the Commission on August 24, 2006, to cover the reconstruction. *See* File Number BZ-20060824AFC, granted March 8, 2007.

<sup>14</sup> *See Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

<sup>15</sup> One Mart reports that Sloan Broadcasting, LLC, has purchased new EAS equipment for the station. We see no basis for reducing the forfeiture amount based on the actions of the new licensee. A licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture. *See AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

<sup>16</sup> On November 16, 2006, the San Diego Office issued a Notice of Violation (NOV No. V20073294001, released November 16, 2006) to One Mart because of deficiencies in the KEVT public inspection file. The inspection which generated this NOV, however, was the same inspection, conducted on the same day, as the inspection which generated the instant *NAL*. Given that these violations were observed by the San Diego agent on the same day, we find that prior

Consequently, we reduce One Mart's forfeiture amount from \$8,000 to \$6,400.

11. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$6,400 is warranted.

#### IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, One Mart Corporation, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,400 for willfully and repeatedly violating Section 11.35 of the Rules.<sup>17</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>18</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>19</sup>

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to One Mart Corporation, at its address of record, and Ernest T. Sanchez, Esquire, its counsel of record.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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to these violations, One Mart had a history of compliance with the Rules.

<sup>17</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35.

<sup>18</sup> 47 U.S.C. § 504(a).

<sup>19</sup> See 47 C.F.R. § 1.1914.